

FILED

JUL 12 2012

PATRICK E. DUFFY, CLERK

By _____
DEPUTY CLERK, MISSOULA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

MISSOULA DIVISION

SHANE McCLANAHAN,)	CV 11-92-M-DWM-JCL
)	CV 11-117-M-DWM-JCL
Petitioner,)	
)	
vs.)	ORDER
)	
WARDEN LEROY KIRKEGARD;)	
ATTORNEY GENERAL OF THE)	
STATE OF MONTANA,)	
)	
Respondents.)	
)	

Petitioner Shane McClanahan filed this action for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 on June 21, 2011, in New Mexico where he was in custody. This matter was then transferred to Montana after the court in New Mexico determined the challenges were against a Montana judgment. United States Magistrate Judge Jeremiah C. Lynch entered Findings and

Recommendation on June 15, 2012, and recommended denying McClanahan's second, fourth, and sixth claims in their entirety. Judge Lynch also recommended denying McClanahan's first claim as to the statements made to Detective Newlon, and his fifth claim as to cases DC-01-422 and CV 11-92-M. Petitioner did not timely object to the Findings and Recommendation, and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

Judge Lynch stated that although two separate judgments are challenged in these two actions, they became procedurally entwined during the state proceedings. Further, Judge Lynch found that McClanahan filed one Amended Petition without identifying which conviction he was challenging. McClanahan was transferred from New Mexico back to Montana after he filed the petition. Following a detailed background of the issues and an analysis of the claims, Judge Lynch determined that McClanahan is not entitled to relief on the merits as to some of his claims. As to other claims, Judge Lynch ordered the State to file an Answer to determine if they will be barred on procedural grounds. After a review

of Judge Lynch's Findings and Recommendations I find no clear error.

Accordingly,

IT IS HEREBY ORDERED that Judge Lynch's Findings and Recommendations (doc. 36) in CV 11-92-M and (doc. 27) in CV 11-117-M are adopted in full. McClanahan's second, fourth, and sixth claims are DENIED in their entirety. McClanahan's first claim is DENIED as to the statements made to Detective Newlon, and his fifth claim is DENIED as to cases DC-01-422 and CV 11-92-M.

Dated this 12th day of July, 2012.

A handwritten signature in black ink, appearing to read 'Molloy', is written over a horizontal line.

Donald W. Molloy, District Judge
United States District Court